

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.3812 and 3813/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2008-09 and 2009-10)

Mehta Financial Services Ltd. 612, Arun Chambers, 6 th floor, Tardeo Road, Mumbai-400034	बनाम/ Vs.	Dy.Commissioner of Income Tax 4(2), Aayakar Bhavan, M K Road, Mumbai-400020
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स्थायी लेखा सं./ PAN : AAACR4142D

अपीलार्थी ओर से / Assessee by	Shri Neelkant Khandelwal
प्रत्यर्थी की ओर से/Revenue by	Shri G N Makwana

सुनवाई की तारीख / **Date of Hearing** : **18.8.2016**

घोषणा की तारीख / **Date of Pronouncement** : **25.8.2016**

आदेश / ORDER

PER RAJESH KUMAR, A. M:

These are the appeals filed by the assessee against the order dated 16.3.2016 passed by the Id.CIT(A)-9, Mumbai for the assessment years 2008-09 and 2009-10. Since these appeals pertain to the same assessee, these appeals are being decided by this common order for the sake of convenience.

2. ITA No. 3812/Mum/2016.

3. Grounds of appeal taken by the assessee are as under :

"1. The Commissioner of Income-tax (Appeals) - 9, Mumbai (hereinafter referred to as CIT(A) erred in upholding the action of Deputy Commissioner of Income-tax - 4(2), Mumbai (hereinafter referred to as the Assessing Officer) in issuing a notice under section 148 dated 28.3.2013 on the basis of the search and seizure operations carried out under section 132 on KSL Group.

The appellants contend that the Assessing Officer passed the assessment order for income-tax assessment year 2007-08 on the basis of the search and seizure operations carried out under section 132 on KSL Group by order dated 29.12.2009 and hence, the Assessing Officer had the information in his possession when he completed the original assessment proceedings for the year under reference by his order dated 15.12.2011 and as such, the issue of impugned notice under section 148 is bad in law and consequently, the impugned reassessment order is also bad in law.

2. The CIT(A) erred in upholding the assessment order passed by the AO u/s 143(3) r.w.s147 inasmuch as he assessment order is bad in law.

The appellants contend that the Assessing Officer in the reasons recorded for re-opening the assessment has mentioned that" it has been found that the assessee company has taken bogus bills for purchases from the following parties -" (emphasis ours) and has not. made any addition in the impugned assessment order on account of such bogus bills for purchases but has made an addition of receipt of unsecured loan from Seaview Trading Co. Pvt Ltd which has been squared-up during the year under reference.

The appellants further, contend that the assessment order is bad in law inasmuch as, per Explanation 3 to section 147 the Assessing Officer has to assess or reassess income ('such income') which escaped assessment and which was basis of formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during course of proceedings. Accordingly, the Assessing Officer having not made any addition on account of alleged bogus purchases which is

the basis for re-opening of assessment, he could not have made any other addition.

3. The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of Rs 1,05,00,000 being loan received by the appellants from Seaview Trading Co. Pvt. Ltd. on the ground that the appellants have failed to prove the identity and creditworthiness of the lender and genuineness of the transaction and thereby treated the said loan received as unexplained cash credit under section 68 of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as the identity and creditworthiness of the lender and genuineness of the transaction are proved beyond doubt and thus, the said loan received cannot be treated as unexplained cash credit under the provisions of section 68 of the Act. Further, the appellants contend that the monies do not belong to them and hence, the provisions of section 68 are not applicable to the facts of the case and as such, the impugned addition ought to be deleted.

The appellants further, contend that the CIT(A) ought not to have upheld the action of the Assessing Officer inasmuch as the Assessing Officer has grossly violated the principles of natural justice in not allowing the appellants an opportunity to cross examine Mr Girishchand Yadav, the main witness on whose statement the Assessing Officer has based the impugned addition, in spite of the appellants requesting for the same; it is the obligation of the Assessing Officer to produce Mr Girishchand Yadav for cross examination inasmuch as he is the witness of the Department."

4. Facts of the case are that the assessee filed its return of income on 19.9.2008 declaring total income of Rs.1,47,76,121/- which was processed under section 143(1) of the Income Tax act, 1961 (hereinafter referred to as the Act). Thereafter the case of the assessee was selected for scrutiny and assessment was completed under section 143(3) at the returned

income. Subsequently the case was reopened under section 147 of the Act and notice under section 148 of the Act was issued to the assessee on 28.3.2013 after recording the reasons which were also duly served the assessee. The reasons recorded by the AO are reads as under :

as below:-

"The assessee company filed its Return of income of income of Rs.14776721/ - on 19/09/2008. The return was processed u/s 143(1) of the Income Tax Act, 1961.

During the course of Search & Seizure Operation u/ s 132 of the Income Tax Act, 1961 in the case of KSL Group on 23. 12.2008,it has been found that the assessee company has taken bogus bills for purchases from the following parties:

- i)Realstar Trading Co. Pvt. Ltd.*
- ii)Watergate Mercantile Co. Pvt. Ltd.*
- iii)Sea view Trading Co. Pvt. Ltd.*
- iv)Superhouse Trading Co. Pvt. Ltd.*
- v)Montreal Trading Co. Pvt. Ltd.*
- vi)Starview Mercantile Co. Pvt. Ltd.*

Moreover, the above parties had confirmed the issuance of accommodation bills to the assessee company during the course of course of Search & Seizure Operation u/ s 132 of the Income Tax Act, 1961 in the case of KSL Group on 23.12.2008. Therefore, I have reasons to believe that income chargeable to tax has escaped assessment"

Copy of the reasons was supplied to the assessee on 16.3.2013. However, the assessee did not file any objection to the proceedings under section 148. Statutory notices were issued under section 143(1) and 142(3) of the Act and served upon the assessee asking various details from the assessee as mentioned in the said notice. The assessee attended the hearings from

time to time before the AO and particularly on 21.3.2014, the assessee filed a letter along with the ledger account, banks statements and a copy of the cheques issued to M/s Seaview Trading Co. Pvt Ltd. Thereafter a summons dated 24.3.2014 u/s 131 (1) were issued to M/s Seaview Trading Co. Pvt Ltd. wherein the details of transactions were called for but the said notice could not be served as the company had left the office. Thereafter the AO required the assessee to produce Principal Officer of M/s Seaview Trading Co. Pvt Ltd. and accordingly Mr.Girishchand R Yadav was produced by the assessee on 26.3.2014 and the AO recorded his statement asking various queries. The AO was not satisfied with the transactions with M/S Seaview Trading Co. Pvt Ltd and doubted the credits as appearing in the books of the assessing amounting to Rs.1,05,00,000/- in the credit of above company on various grounds such as the said company having Rs.65.95 crores turnover, net profit of Rs.1,52,180/- with paid up capital of Rs.1 lakh, investments of Rs.9.5 crores and advances of Rs.3.65 crores. The AO observed that it is impossible to believe that a company's paid up capital of Rs.1 lakhs has advanced Rs.3.65 crores whose director earning Rs.8000/- per month from this company and staying in the rented house and thereby held that the credits in the credit of M/s Seaview Trading Co. Pvt Ltd. in the books of the assessee was not genuine and finally framed the assessment u/s

143(3) of the Act read with section 147 of the Act by making an addition of Rs.1,05,00,000/- u/s 68 of the Act at an income of Rs.2,26,95,490/- by disbelieving the identity and creditworthiness of the creditor and genuineness of the transaction. The order of the AO was upheld by the Id. CIT(A) in the appellate proceedings. Now the assessee is before us challenging the order of CIT(A)

5. We shall first take up the issue on merit as raised in ground No.3 of the appeal that the Id. CIT(A) has erred in upholding the addition of Rs.1,05,00,000/- as made by the AO u/s 68 of the Act for unexplained cash credit.

6. The Id.AR vehemently argued before us that similar issue of addition u/s 68 has been decided in assessee's own case by the co-ordinate bench of the Tribunal in ITA NO.6765/Mum/2012(AY-2007-08) dated 20.2.2015 in favour of the assessee. The Id. AR submitted that the reasons recorded by the AO for reopening the assessment stated that the assessee company has taken bogus bills for purchase from six parties and in the year 2007-08, the assessee received a sum of Rs.94,95,000/- from Realstar Trading Co. Pvt. Ltd. whereas in the current year under the same facts Rs.1.05 crores were received from M/s Seaview Trading Co. Pvt Ltd. The Id. AR argued that the co-ordinate bench of the Tribunal after considering all the facts and circumstances, concerning the said transaction has decided the

issue in favour of the assessee by holding that the addition cannot be sustained u/s 68 of the Act as the identity and creditworthiness of the creditor and genuineness of the transactions could not be doubted as the assessee furnished all evidences which satisfied all three conditions namely identity , creditworthiness and genuinity and prayed that in view of the decision of the Tribunal in assessee's own case the addition as made of Rs.1.05 crores be deleted.

7. On the contrary, the Id. DR objected to the arguments of the Id.AR that in the year 2007-08 the assessment was made u/s 143(3) of the Act whereas in the present year the assessment was made u/s 143(3) read with section 147 of the Act. The Id. DR submitted that the assessee has taken bogus entries from M/s Seaview Trading Co. Pvt Ltd and therefore, the AO has rightly made addition u/s 68 of the Act as the identity and creditworthiness of the creditor and genuineness of the transaction was not proved as the company having paid up capital of Rs.1 lakh could not loan such huge sum to the assessee. Thus it was clear that the entire transaction was sham and bogus one and heavily relied on the orders of the Authorities below and prayed that the addition be confirmed by dismissing the appeal of the assessee.

8. We have considered the rival contentions and perused the material placed before us including the orders of authorities below. We find that the

assessee has raised a sum of Rs.1.05 crores during the year from M/s Seaview Trading Co. Pvt Ltd. From the perusal of reasons recorded by the AO, the party M/s Seaview Trading Co. Pvt Ltd is at serial no.3 and Realstar Trading Co. was appearing at Sr.No.1 in the reasons recorded by the AO u/s 148 of the Act. In the assessment year 2007-08, the assessee has taken similar loans from Realstar Trading Co amounting to Rs.94,95,000/- and in the current year the assessee took the amount of Rs.1.05 crores from M/s Seaview Trading Co. Pvt. We find that the facts of the current year are identical to that of the facts of earlier year i.e AY 2007-08 in which the co-ordinate Bench of the Tribunal deleted the addition by upholding that the transactions as made by the assessee from Realstar Trading Co was genuine and no addition u/s 68 could have been made. The operative portion of the judgment of the Tribunal is reproduced as under :

"9. We have heard the rival contentions and perused the record. We notice from the assessment order that the assessing officer has placed full reliance on the Sworn statements given by the four persons viz., Shri Mahavir Duggar, Shri Dilip S Mehta, Smt. Sangeetha J Sawant and Shri Girishchand R Yadav for doubting about the genuineness and credit worthiness of M/s Real Star Trading Company P Ltd, from whom the assessee had received share application money of Rs.94.95 lakhs. Admittedly, these statements were taken from the above said persons in connection with the search operations conducted on KSL group of Companies. Admittedly, the questions posed in the Statements should have been aimed to bring out the facts relating to M/s KSL Group only. Admittedly, at that point of time, these persons should also have given the statements in connection with M/s KSL group only.

10. *In the above said statements, as submitted by the Ld A.R, no question seems to have asked about the transactions with the assessee herein. Though the assessing officer confronted the statement given by Shri Mahavir Duggar to him, yet the AO only asked about the correctness of the statement given by him earlier. Shri Mahavir Duggar stated that the contents of his earlier statement were correct. Hence, during the course of present assessment proceedings also, the AO did not question about the transactions entered between the assessee and M/s Real Star Trading Co. P Ltd. Thus, it is seen that the assessing officer has proceeded on the presumptions that all the transactions entered by M/s Real Star Trading Co. P Ltd shall be bogus only. The Ld CIT(A) has also confirmed the addition only on such presumptions. This approach of the tax authorities, in our view, does not appear to be correct.*

11. *The provisions of sec. 68 of the Act place the initial burden of proof upon the assessee. It is well settled proposition that the assessee has to discharge three main ingredients in order to discharge the initial burden of proof, i.e., he has to prove the identity of the creditor, the genuineness of transactions and the credit worthiness of the creditor. Once the assessee discharges the initial burden placed upon him, then the burden to disprove the said claim shifts upon the assessing officer. In the instant case, we notice that the assessee has filed confirmation letter obtained from M/s Realstar Trading Co. P Ltd along with its financial statements. The above said company has also filed its income tax returns. As requested by the AO, the assessee has also produced the director also. Through the financial statements, the assessee has proved the credit worthiness of the above said company. There is no doubt about the identity of the Company. However, the AO has, in effect, doubted about the genuineness of the transaction, in view of the findings arising out of the search operations conducted on M/s KSL group of companies.*

12. *We have already noticed that the assessing officer has considered the statements taken from the parties in connection with search operations conducted on M/s KSL group. We have also noticed that the AO did not make any enquiries about the transactions entered between the assessee and M/s Realstar Trading Co. P Ltd. Under these set of facts, we are of the view that the tax*

authorities should not have placed their reliance on the statements given in connection with M/s KSL group for drawing adverse inference in the instant case. We notice that the assessee has asked for an opportunity to cross examine the four persons cited above, but the said opportunity seems to have not been provided with, even though the AO has reported that the assessee did not avail the opportunity. We have already noticed that the assessee has furnished affidavits obtained from the four persons and these affidavits would show that they have not received any communication from the AO asking them to appear for Cross examination. These facts, in our view, further weaken the case of the revenue. Hence, we are of the view that the tax authorities are not justified in doubting about the genuineness of the transactions without bringing on record any material to show that the impugned transaction entered between the assessee and M/s Realstar Trading Co. P Ltd was also bogus. In our view, the statements given in connection with M/s KSL group cannot be used against the assessee, since the trade dealings between each of the party would differ in colour and character. Hence, we are of the view that the revenue cannot take support from the decision rendered by Hon'ble Delhi High Court in the case of Nova Promoters & Finlease (P) Ltd (supra).

13. The documents furnished in the paper book would show that the share application money has been received by the assessee by following proper procedures through the Banking Channels. The financial statements of M/s Realstar Trading Co. P Ltd also show that it is carrying on business activities and thus, the credit worthiness to give the Share application money also stands proved. Accordingly, we are of the view that the assessee has discharged the initial burden placed upon him. In view of the above, we are unable to agree with the view taken by the Ld CIT(A). Accordingly we set aside the orders of Ld CIT(A) and the AO on this issue.

14. In the result, the appeal filed by the assessee is allowed."

9. From the above it is clear that the Tribunal has reached the findings that the assessee has duly proved the genuineness of transaction., creditworthiness and identity of the creditor by producing the Principal Officer of the company and also by filing the details of the company like

banks statement, audited account of the lender. Same records were produced and the Principal Officer was also produced and his statement was also recorded by the AO. We find that the identical issue of addition u/s 68 was decided in the assessee own case in the AY 2007-08. Therefore, respectfully following the decision of the co-ordinate bench of the Tribunal we set aside the order of Id. CIT(A) and direct the AO to delete the addition of Rs. 1,05,00,000/-.

10. Since we have decided the appeal on merit in favour of the assessee, the other grounds of appeal on legal/technical issues are rendered academic in and dismissed as infructuous.

11. I.T.A. No.3813/Mum/2016 AY 2009-10

12. We have already decided identical issue as involved in this appeal in ITA No 3812/Mum/2016 with identical facts (supra) and our decision in ITA No 3812/Mum/2016 would mutatis mutandis apply to this appeal as well. The appeal of the assessee is allowed and AO is directed accordingly.

13. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 25.08.2016.

Sd
(SHAILENDRA KUMAR YADAV)
न्यायिक सदस्य / JUDICIAL MEMBER

sd
(RAJESH KUMAR)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई MUMBAI; दिनांक DATED : 25 .8.2016
Sr.PS:SRL:

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai